

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| CARL WAYNE REED, JR., | § | |
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| Petitioner, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. H-07-3189 |
| | § | |
| NATHANIEL QUARTERMAN, et al., | § | |
| | § | |
| Respondents. | § | |

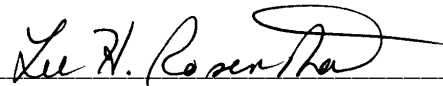
MEMORANDUM AND ORDER

The petitioner, Carl Wayne Reed, challenges his state court conviction for aggravated robbery under 28 U.S.C. § 2254. This federal petition asserts a denial of Fifth and Sixth Amendment rights as the basis for relief. The respondent moved for summary judgment on the basis that Reed had failed to exhaust his state remedies for his Sixth Amendment claims. (Docket Entry No. 7). There is no dispute that Reed exhausted his Fifth Amendment claims.

In response to the summary judgment motion, Reed has moved for leave to amend his petition to delete his Sixth Amendment claim and to proceed solely on the basis of his Fifth Amendment claim. (Docket Entry No. 11). The courts recognize that when a habeas petition presents a mixture of exhausted and unexhausted claims, the federal court “should allow the petitioner to delete the unexhausted claims and to proceed with the exhausted claims....” *Jones v. Bock*, 127 S.Ct. 910, 924 -925 (2007), quoting *Rhines v. Weber*, 544 U.S. 269, 278 (2005)). The motion for leave to amend is granted.

Because the only remaining claim is exhausted, the summary judgment motion is denied. The respondent may file a summary judgment motion on the merits by **September 5, 2008**.

SIGNED on July 23, 2008, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal
United States District Judge